## COVINGTON & BURLING

1201 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004-2401 TEL 202.662.6000 FAX 202.662.6291 WWW.COV.COM WASHINGTON NEW YORK SAN FRANCISCO LONDON BRUSSELS

**ORIGINAL** 

JENNIFER A. JOHNSON TEL 202.662.5552 FAX 202.778.5552 JJOHNSON & COV.COM

February 3, 2005

RECEIVED

FEB - 3 2005

## **By Hand Delivery**

Federal Communications Commission
Office of Secretary

Ms. Marlene H. Dortch Secretary Federal Communications Commission 445 12<sup>th</sup> Street, S.W. Washington, D.C. 20554

Re: Ex Parte Notice in CS Docket No. 98-120

Dear Ms. Dortch:

On February 2, 2005, Terry Mackin, Executive Vice President of Hearst-Argyle Television, Inc. and Chairman of the NBC Television Affiliates ("NBC Affiliates"), NBC Affiliates Board Members Michael Fiorile, President and Chief Executive Officer of Dispatch Broadcast Group, and Stephen Langford, Vice President and General Manager of WAVE-TV, and Jonathan Blake and the undersigned, counsel for the NBC Affiliates, met with Commissioner Abernathy and her Senior Legal Advisor Matthew Brill, with Catherine Bohigian, Legal Advisor to Commissioner Martin, with Commissioner Adelstein and his Legal Advisor, Eric Bash, and with Jonathan Cody, Legal Advisor to Chairman Powell.

At these meetings, the NBC Affiliates discussed the impact on consumers and television broadcasters of an FCC decision allowing cable operators to act as gatekeepers with respect to the free, digital multicast programming streams offered by television stations in their local markets. The NBC Affiliates described the public benefits of such programming, including increased diversity and localism, and the important contribution that such additional programming streams can make to the survival of over-the-air television stations and to their viability as competitors to multichannel video programming providers. These additional programming services are also likely to spur consumers to invest in digital technology, thus hastening the digital transition. The NBC Affiliates discussed the particular investment that they had made in developing a locally-oriented multicast service, NBC Weather Plus, and the fact that some cable operators already are denying carriage of this free multicast service for anti-competitive reasons. The NBC Affiliates emphasized that new multicast programming offerings such as NBC Weather Plus will not survive and deliver benefits to the public if they are not carried by cable systems and that reliance on voluntary carriage already has proven insufficient to ensure carriage.

to a C right of 1

## COVINGTON & BURLING

Ms. Marlene H. Dortch February 3, 2005 Page 2

The NBC Affiliates strongly urged the Commission to defer action on this issue in light of Congress' express intent to take up comprehensive DTV legislation this year that would adopt a "hard date" for the conclusion of the DTV transition. Adopting digital carriage requirements against the backdrop of a DTV transition statute that is certain to be changed – particularly when such carriage requirements are unlikely to go into effect for years – threatens to cause irreparable damage to the DTV transition and deny consumers the very benefits it is intended to deliver.

Pursuant to Section 1.1206(b) of the Commission's Rules, an original and one copy of this letter are being submitted to the Secretary's office, with a copy to those at the FCC who participated in the meetings.

Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,

Jennifer/A. Nohnson

cc: Commissioner Abernathy
Commissioner Adelstein
Matthew Brill
Catherine Bohigian
Eric Bash
Jonathan Cody